

REMARKS

In reply to the Office Action dated October 20, 2004, claims 3-4, 11, 15, and 18 are currently under examination in the Application. By the above amendment, claim 15 has been amended for clarity. The specification has been amended to update the status of certain related applications and to truncate the priority claim to U.S. Application No. 09/289,198, filed April 9, 1999. No new matter has been added. The above amendment is not to be construed as acquiescence to the stated grounds for objection/rejection and is made without prejudice to prosecution of any subject matter modified and/or removed by this amendment in a related divisional, continuation and/or continuation-in-part application.

***Priority***

Applicants note that the Examiner indicated in the Office Action mailed November 14, 2002 that the claimed sequences will only be afforded priority to U.S. Application No. 09/289,198, filed April 9, 1999. Without acquiescing to this determination, Applicants have amended the specification accordingly. Applicants have also amended the specification to update the status of several related applications. Applicants further note that the priority information available for this application on PAIR has not been corrected to reflect the Examiner's previous determination of priority. Applicants respectfully request that a correction be made prior to issuance of a notice of allowance.

***Claim Rejections – 35 U.S.C. § 112***

Claims 3, 4, 11, 15, and 18 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite for failing to particularly point out and distinctly claim that which Applicants regard as the invention. In particular, the Action contends that the phrase “degenerate variants thereof” in claim 18 is not specifically defined in the specification and that one of skill in the art would not be apprised of how different a sequence may be from the base sequence and still be included within the scope of the claim. Additionally, the Action alleges that the recitation of “at least about” is indefinite in that “at least” identifies a minimum value for

a range or length with no upper limit while “about” constrains the length to close to the stated number. Further, the Action contends that claim 15 appears inconsistent in that the at least two primers comprise “a” polynucleotide. The Action asserts that it is unclear whether each primer comprises a polynucleotide having the new limitation. Lastly, the Action points out that “accordingly to” in claim 15 should be “according to”.

Applicants thank the Examiner for noting the error in claim 15 and for noting that the terminology regarding the two primers is unclear. Applicants have amended the claim to correct the errors.

Applicants traverse the remaining rejections and submit that the claims as amended are not vague or indefinite. In particular, with regard to the phrase “degenerate variant”, Applicants submit that this is a commonly used term of art that would be readily understood by the skilled artisan. As evidence, Applicants provide the definition below taken from the well-known textbook, *Molecular Biology of the Cell*, Third Edition (Alberts, Bray, Lewis, Raff, Roberts, and Watson, Garland Publishing, Inc. New York & London. 1994. page G-7) (a copy is provided herewith):

Not a moral judgment but an adjective that describes multiple states that amount to the same thing: *different triplet combinations of nucleotide bases (codons) that code for the same amino acid*, for example. (emphasis added)

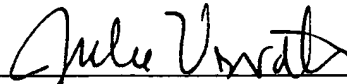
Regarding the phrase “at least about”, Applicants disagree with the Action’s assertion that the range is unclear. Applicants submit that the skilled artisan would readily appreciate that the word “about” is meant to qualify the minimum number of nucleotides (*i.e.* 10) and is not meant to limit the length of the polynucleotide as a whole. The skilled artisan would immediately understand that the polynucleotide should contain a minimum of around 10 nucleotides (*e.g.*, 8 or 9 or 10, *etc*) but is not limited in length. Applicants respectfully request reconsideration and withdrawal of the rejection.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicants respectfully submit that all the claims remaining in the application are now believed allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



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Enclosure:

Postcard

Copy of Definition of Degenerate (Molecular Biology of the Cell, Third Edition)

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